

February 23, 2013

Office of the Secretary
Federal Communications Commission
445 12th Street NW
Washington, DC 20554

Re: WC Docket No. 12-375

This Comment responds to the Commission's question regarding its authority to regulate ICS under Communications Act section 201(b). Regulation under this provision would be consistent with the "public interest," as that term has been defined by the courts, and therefore permissible.

What Is The "Public Interest?"

Legal authority supports an expansive view of the "public interest" provision of Section 201(b). Courts have consistently rejected the contention that the "public interest" extends only to promoting competition between carriers; several circuits have permitted—and even required—the Commission to consider a host of public interest factors when promulgating regulations. *See Phonetele, Inc. v. Am. Tel. & Tel. Co.*, 664 F.2d 716 (9th Cir. 1981); *Mid-Tex. Commc'n Sys., Inc. v. Am. Tel. & Tel. Co.*, 615 F.2d 1372 (5th Cir. 1980); *Ne. Tel. Co. v. Am. Tel. & Tel. Co.*, 477 F. Supp. 251 (D. Conn. 1978). Other factors considered by these courts, such as "the need of the public for reliable service at reasonable rates" and "the proper allocation of the rate burden," support the contention that the Commission may consider broader social policy when regulating for the "public interest." *See Phonetele*, 664 F.2d at 722. Setting rates for ICS presents such an instance where social policy-based regulations are warranted.

What Are The Public Interests Served?

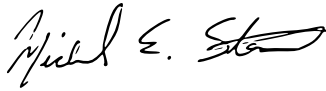
Regulation of ICS serves the public interest in creating safe communities and reducing crime in two ways: (1) by facilitating successful reentry of prisoners into communities, and (2) by allowing incarcerated parents to maintain crucial contact with their children.

First, the maintenance of family and community ties while in prison has consistently been found to correlate positively with successful reentry (that is, non-recidivism) after release. *See* Creasie Finney Hairston, *Family Ties During Imprisonment*, 52 Fed. Probation 48, 49 (1988). Since phone calls can be instrumental to maintaining these contacts in the federal system, where inmates can be prohibitively far from their families for in-person visits, regulating these rates to encourage contact would be in the "public interest."

Second, there is a public interest in regulating rates to ensure incarcerated parents can maintain contact with their children. Young children experiencing extended separation from incarcerated parents often suffer impaired socioemotional development and

developmental regressions; older children experience increased delinquency themselves. See Jeremy Travis et al., *Families Left Behind: The Hidden Costs of Incarceration and Reentry*, Urban Institute Justice Policy Center 1, 3 (2005) (available at http://www.urban.org/UploadedPDF/310882_families_left_behind.pdf). Phone contact can help maintain the parent-child relationship crucial to a child's development, and studies have found a statistically significant relationship between the presence of a supportive parent-child relationship and future criminal behavior. See Jeremy Travis, *Families and Children*, 69 Fed. Probation 31 (June 2005). However, in part because of the exorbitant fees resulting from facility surcharges and elevated ICS rates, less than half of incarcerated mothers report even monthly phone contact. See Venezia Michaelson et al., *More Than Visiting Hours*, 4 Sociology Compass 576, 580 (2010). Accordingly, regulating ICS rates to counteract these surcharges would serve the public interest.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael E. Stewart". The signature is fluid and cursive, with a large initial "M" and a stylized "S" at the end.

Michael Stewart
Stanford Law School